

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**IN RE PUDA COAL SECURITIES, INC.  
ET AL. LITIGATION.**

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) Civil Action 11-CV-2598 DLC  
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**MEMORANDUM OF LAW IN SUPPORT OF THE MOTION  
TO WITHDRAW AS COUNSEL FOR DEFENDANT MING ZHAO**

Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) respectfully submits this Memorandum of Law in Support of its Motion to Withdraw (“Motion”) as counsel for Defendant Ming Zhao pursuant to Local Civil Rule 1.4 in Civil Case Nos. 11-CV-2598 (DLC) (the “Class Action”) and 12 Civ. 1316 (DLC) (the “SEC Action”) (collectively, the “Actions”).

## **I. BACKGROUND**

In November 2014, Quinn Emanuel appeared in the Actions on behalf of Mr. Zhao. Since that time, Quinn Emanuel has prepared and submitted filings with the Court, sought discovery from Plaintiffs, responded to discovery requests from Plaintiffs, prepared for depositions, worked with experts to evaluate Plaintiffs’ damages calculations, and engaged in settlement negotiations with Plaintiffs.

As set forth in the attached Declaration of Michael B. Carlinsky and the Declaration of Ming Zhao, Mr. Zhao has instructed Quinn Emanuel to stop incurring fees and costs because he does not have the financial resources to pay for his defense and he no longer wants to defend the Actions. Accordingly, Quinn Emanuel seeks leave to withdraw as counsel for Mr. Zhao.

## **II. ARGUMENT**

Local Civil Rule 1.4 provides:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal . . . . All applications to withdraw must be served upon the client and (unless excused by the Court) upon all other parties.

Non-payment of legal fees is a sufficient basis upon which to grant a motion to withdraw. *Century Jets Aviation, LLC v. Alchemist Jet Air, LLC*, No. 08-cv-9892 (PKL), 2009 WL 4035642, at \*2 (S.D.N.Y. Nov. 23, 2009) (“[i]t is well-settled that non-payment of counsel fees is a proper basis for withdrawal”); *see also Prof'l Merch. Advance Capital, LLC v. C Care Servs., LLC*, No. 13-cv-6562 (RJS), 2014 U.S. Dist. LEXIS 108444, at \*2-3 (S.D.N.Y. Aug. 5, 2014) (granting counsel’s motion to withdraw due to nonpayment of legal fees); *Clover v. Shiva Realty of Mulberry*, No. 10 Civ. 1702 (RPP), 2011 WL 4530536, at \*2 (S.D.N.Y. Sept. 30, 2011) (same) (citing *HCC, Inc. v. R H & MMach. Co.*, No. 96-cv-4920, 1998 WL 411313, at \*1 (S.D.N.Y. July 20, 1998)).

In addition, courts have allowed withdrawal when the defendant no longer wishes to participate in the litigation. *See Hossain v. Roger Smith Hotel/Unit No. 3*, 98 Civ. 5119 (DAB) (SEG), 1999 U.S. Dist. LEXIS 4682, at \*2 (S.D.N.Y. Apr. 8, 1999) (“[d]ischarge by a client is sufficient cause for withdrawal of an attorney.”); *Oscar de la Renta Ltd. v. Strelitz Ltd.*, No. 92 Civ. 3907, 1993 WL 205150, at \*1 (S.D.N.Y. June 7, 1993) (“[T]he defendant has indicated that it no longer wishes to either defend this action or prosecute its counterclaim. Given this position, it is presumed that the defendant no longer needs the services of its counsel”); *Fireman’s Ins. Co. of Newark v. Alasker*, 90 Civ. 6164 (PKL), 1992 U.S. Dist. Lexis 7365, at \*1 (S.D.N.Y. June 1, 1992) (granting withdrawal of defense counsel because a party indicated that it no longer wished to be represented by counsel in the litigation).

Upon a showing of “satisfactory reason(s),” courts will permit withdrawal as long as it does not substantially disrupt the pending litigation. *Police Officers for a Proper Promotional Process v. Port Authority of New York and New Jersey*, 11 Civ. 7478(LTS)(JCF), 2012 WL 4841849, at \*1 (S.D.N.Y. Oct. 10, 2012) (“withdrawal [of counsel] at this juncture will

not substantially disrupt this litigation.”); *see also S.E.C. v. Pentagon Capital Management PLC*, No. 08 Civ. 3324 (RWS), 2012 WL 3065981, at \*2 (S.D.N.Y. July 25, 2012).

Mr. Zhao does not have the financial resources to fund his defense. Accordingly, he has instructed Quinn Emanuel to stop incurring additional fees and costs. Mr. Zhao does not intend to further participate in the Actions, including attending the February 17, 2015 mediation and his deposition.

Quinn Emanuel’s withdrawal will not disrupt or delay the litigation. The current discovery schedule and trial date will be unaffected by Quinn Emanuel’s withdrawal because Mr. Zhao will no longer defend the Actions.

In sum, Quinn Emanuel respectfully requests that the Court grant its Motion to withdraw, given Mr. Zhao’s inability to defend the Actions, his instructions to Quinn Emanuel to cease incurring fees and costs, and the fact that the Actions will be unaffected by Quinn Emanuel’s withdrawal.

### **CONCLUSION**

For the reasons set forth above, Quinn Emanuel respectfully requests that the Court grant its Motion to Withdraw as counsel for Defendant Ming Zhao in the Actions.

DATED: February 17, 2015  
New York, New York

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 2015, I caused a true and correct copy of the Memorandum of Law in Support of the Motion to Withdraw and the accompanying notice of motion to be served by (i) electronic means and by mail on Defendant Ming Zhao's last known mailing address in Taiyuan City, Shanxi Province, the People's Republic of China; and (ii) electronic means on counsel to all other parties in Civil Case Nos. 11-CV-2598 DLC and 12 Civ. 1316 (DLC).

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